IBRAHIM MAT YATIM & ANOR.

v.

GAN JIUK TIAU

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[CIVIL SUIT NO. P 456 OF 1980]
2 MAY 1985

TORT: *Accident - Collision of motor cycle into bicycle ridden by plaintiffs - Damages - Negligence - Full liability - Second plaintiff - Deafness - Fracture of skull - Permanent brain damage - Loss of future earnings.*

The first and second plaintiffs aged 55 and 54 respectively at the date of trial were fishermen. They were riding on a bicycle when the defendant on his motor cycle collided into them causing serious injuries to the second plaintiff.

Held:

[1] The defendant was entirely to be blamed for the accident.

[2] The quantum of damages was awarded as follows:

First plaintiff

(a) agreed special damages	RM 100
(b) agreed general damages	RM 1,000

Second plaintiff

(a) special damages as agreed	RM 1,300
(b) loss of clothings	RM 30
(c) pretrial loss of earnings	RM60,000
(d) deafness	RM18,000
(e) head injury	RM70,000
(f) loss of future earnings	RM60,908

[Damages awarded with interest. Costs to plaintiffs.]

Cases referred to:

Lim Eng Kay v. Jaafar bin Mohamed Said [1982] 2 MLJ 156; [1982] CLJ (Rep) 190
Kow Ah Dek & Anor.v. K. Ratnasingam [1981] 2 MLJ 24

For the plaintiffs - B.G. Martin; M/s. B.G. Martin & Co.
For the defendant - W.H. Teng; M/s. Ariffin & Partners

JUDGMENT

Eusoff Chin J:

The Notice of Appeal lodged by the defendant in this case is defective in that the contents of that notice state that the defendant is appealing to the High Court against my decision. I believe this is a careless mistake made by the defendant's solicitor who signed the notice, and I therefore proceed to give the grounds of my judgment.

The evidence adduced by the plaintiffs is that on 21 February 1980 at about 10.10 p.m. the plaintiffs were riding a bicycle on their way home after their sea fishing trip. Plaintiff No. 1, Ibrahim bin Mat Yatim was paddling the bicycle and plaintiff No. 2 Yaakub bin Zakaria was the pillion rider. They were on Sekinchan/Tanjong Karang Road. At about the 9 ½ milestone,

a motor cycle No. BBE 3610 came from behind the plaintiffs and knocked into the rear of their bicycle. Both the plaintiffs were thrown to the grass on the left side of the road. At the time of accident they were cycling about two feet from their left edge of the road. Both the plaintiffs were injured. Ibrahim lodged a police report - AB2.

The defendant gave evidence and said that he was going home riding motor cycle BBE 3610 along Tanjong Karang Road. It was drizzling. He was going at about 30 to 35 miles per hour. The lights of an oncoming vehicle blinded him. He could not see what was ahead of him. He proceeded on and collided into the bicycle. He did not know if the bicycle had its light on. He did not know if the bicycle was crossing the road. He fell down and was unconscious. He lodged a police report - Exh. D1.

I held the defendant entirely to be blamed for this accident. The sketch plan at AB3 produced by PW1 who was the police officer investigating the accident shows that the accident took place on a straight road. The key to the sketch plan at AB4 shows the road was 20 feet wide. The sketch plan shows "A" - blood spot - two feet from the left edge of the road as one faced Sekinchan. The bicycle "B" was on the grass on the left side of the road. The motor cycle "C" is 69 feet from the blood spot "A". The investigating officer said the bicycle was damaged on its rear wheel and the rear carrier. The motor cycle was damaged at the front mudguard. The evidence of PW1, the sketch plan and damage to the bicycle of the plaintiffs and defendant's motor cycle support the evidence of PW1 that he was riding at about two feet from the left edge of the road and was not crossing the road from the left to the right side of the road when the accident took place.

The defendant did not say if his motor cycle head lamp was on. He did not know if the plaintiffs' bicycle had its light on. As far as he knew, the oncoming vehicle's light had blinded him. I believe on a straight road he could have see the oncoming vehicle's lights for quite a far distance away. If that vehicle's lights were so powerful as to affect his vision, he should have slowed down immediately to a stop. He should not have proceeded forward until he could see clearly the road ahead of him. He had no regard for his own safety or the safety of other road users who might be on the road ahead of him. He took great risk, and was wholly negligent in not doing anything to avoid the collision into the plaintiffs' bicycle. The plaintiffs cannot be held in any way to be guilty of contributory negligence since they were all the time cycling close to the left edge of the road.

As to the quantum, both the Counsel had agreed that on a 100% liability the first plaintiff who suffered slight injuries, should get RM1,000 as general damages and RM100 as special damages. I award the first plaintiff these amounts.

As to the second plaintiff, the injuries to his head arising out of the accident had caused him to be deaf. Both Counsel agreed that RM18,000 to be reasonable amount of damages for this deafness. I awarded him this RM18,000 for the deafness suffered by him.

The second plaintiff was unconscious after the accident. He was hospitalised for nine days - admitted on 21 February 1980 and discharged on 2 March 1980. X-ray of the skull showed he suffered fracture of the right parietal bone and fracture of the left maxillary antrum. These fractures are now healed. But his brain had been affected. He had one inch laceration of the right elbow, and one inch laceration over the occiput. Upon admission to the hospital he had bleeding through his right ear. The two medical reports, one tendered by the plaintiffs (SAB1) and one tendered by the defendant (Exh. D1) showed the brain injury suffered by the second plaintiff had turned him into a completely detached person with his own deep

thoughts. He showed no interest in his surroundings. He had poor memory with total lack of interest in his work and personal hygiene. The changes in his personality are permanent. Both the medical reports confirm that as a result of the head injury he is now unable to work as a fisherman or to take on the responsibility in the care and welfare of his home. It is doubtful if he will ever be able to resume work as a bread-winner for his family.

In *Lim Eng Kay v. Jaafar bin Mohamed Said* [1982] CLJ (Rep) 190 the Federal Court upheld the award of the High Court of RM80,000 for severe brain injury and fracture of right thigh bone and jaw bone.

In *Kow Ah Dek & Anor. v. K. Ratnasingam* [1981] 2 MLJ 24, the Federal Court upheld the award of RM70,000 for minimal brain injury. The plaintiff there had marked contusion of his scalp over the right parietal region and swelling of the brain. He had a fracture of the nasal bone with slight distortion and bleeding nostril. The minimal brain damage resulted in a considerable change in his behaviour. He was unable to apply himself to tasks requiring mental concentration and had poor memory.

The 2nd plaintiff here had suffered two fractures of the skull. The effects of the head injuries on him are almost similar to those suffered by the plaintiff in *Kow Ah Dek v. K. Ratnasingam.* I would therefore award the second plaintiff RM70,000 for pain and suffering and loss of amenities resulting from the injury to his head.

The parties had agreed that the fees for medical report and specialist report on the second plaintiff be RM1,300. The second plaintiff in his present condition would not be able to give evidence. But in his statement of claim he had claimed RM50 for loss of clothings in the accident. I find no reason to disallow this. I awarded RM30 as reasonable damage for loss of his clothings.

The evidence of PW2 (1st plaintiff) shows that he and the second plaintiff were fishermen going far out to sea to catch fish. The second plaintiff was the owner of quite a large boat, propelled by a 24 horse-power engine. Only the two plaintiffs used this boat for fishing. Their shares of the catch were: one part to 1st plaintiff and two parts to the 2nd plaintiff. The second plaintiff as owner of the boat had to spend on the cost of diesel and he provided the fishing net and food. The 1st plaintiff said that their catch was uncertain but for each trip the 1st plaintiff's share was at least RM20 and at the most RM200. His average monthly income was about RM1,200 per month. Based on this evidence, I would assess that the 2nd plaintiff's monthly earning at the date of accident should be RM1,000.

I assessed the pretrial loss of income for the second plaintiff to be RM60,000 for 60 months from the date of accident to the date of trial.

The medical reports confirm that the second plaintiff would not be able to pursue his work as a sea fisherman. In fact in his condition he is unfit for any work. He is 54 years old at the date of trial. The first plaintiff is 55 years old, and is still a sea-going fisherman. I see no reason why the 2nd plaintiff should not be also doing the same profession if not for the accident for at least the next 8 years. He suffers from no illness other than the disabilities which were the result of the accident. The 8 years of useful working life should be reduced to 6 years for contigencies and for the fact that he is getting a lump sum. Using the actuary table at RM1,000 per month I awarded to the second plaintiff a loss of future earnings of RM60,908.

I gave judgment to the plaintiffs as follows-

To first plaintiff

(1) Agreed special damages	RM 100
(2) Agreed general damages	RM 1,000

Interest at 3% per annum on (1) from date of accident to date of trial.
Interest at 6% per annum on (2) from date of service of writ to date of trial.

To second plaintiff

1. (a) Special damages as agreed	RM 1,300
(b) Loss of clothings	RM 30
(c) Pretrial loss of earnings at RM1,000 per month for 60 months	RM60,000
Total:	RM61,300
2. General damages for pain and suffering and loss of amenities-	
(a) For deafness as agreed by the parties	RM18,000
(b) Head Injury	RM70,000
Total:	RM88,000
3. Loss of future earnings	RM60,908

Interest at 3% per annum on (1) from the date of service of trial.
Interest at 6% per annum on item (2) from date of service of writ to date of trial.

4. The defendant to pay the costs of this suit to the plaintiffs.

Also found at [1985] 1 CLJ 581